



## CITY OF HAYWARD AGENDA REPORT

Meeting Date 04/10/03

Agenda Item 4

**TO:** Planning Commission

**FROM:** Dyana Anderly, AICP, Planning Manager

**SUBJECT:** Text Change Application PL-2003-0175 - Initiated by the Planning Director - Request for an Amendment to the Zoning Ordinance Relative to Expiration of Discretionary Permits and Miscellaneous Clarifications and Corrections, Including Definition of a Garage, Bedroom, Home Occupation, Household Pets and Livestock

### RECOMMENDATION:

It is recommended that the Planning Commission recommend to the City Council that they approve the Negative Declaration and amend the Zoning Ordinance.

### DISCUSSION:

#### Lapse of Approval

When applications for a discretionary action (administrative use permit, conditional use permit, site plan review, and variance) are approved, the intent is to provide a period of time in which the use or construction may be established in accordance with all conditions of approval; otherwise, the approval lapses. Presently, the Zoning Ordinance provides for lapse of approval for conditional use permits as follows:

*SEC. 10-1.3255 LAPSE OF APPROVAL. a. (1) Conditional use permit approval is void one year (24 months if a subdivision is concurrently involved) after the effective date of approval unless a building permit application for the subject project has been accepted for processing by the Building Official or business operations have commenced prior to that date in accordance with all applicable conditions of approval.*

*(2) If a building permit is issued for construction of improvements authorized by the conditional use permit approval, the conditional use permit approval shall be void two years after issuance of the*

*building permit, or three years after approval of the conditional use permit application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the conditional use permit.*

There is a loophole in the text in that it allows a discretionary approval to remain active as long as a building permit application has been accepted but not processed or issued. The reason is that plans are sometimes accepted but not issued because plans are inadequate, the applicant lacks the funds to pick them up, or the applicant changes his/her mind about constructing the project.

If the building permit review process is delayed significantly, it can be several years before a project gets underway, if at all. In the meantime, revisions to City policies, design guidelines or zoning regulations may result in a project that no longer meets the City's goals, yet the discretionary approval is still viable.

Once a building permit has been accepted for processing by the Building Official, the Uniform Building Code allows the Building Official to expire the building permit application after six months if a building permit has not been issued. The Building Official may also extend the review period for six months under extenuating circumstances. Therefore, staff is recommending amending the Zoning Ordinance by adding the following language to cause a lapse of approval of a discretionary permit as intended. The example below is for a conditional use permit, but similar language could be applied to administrative use permits, site plan reviews, and variances.

*Conditional use permit approval is void one year (24 months if a subdivision is concurrently involved) after the effective date of approval unless (a) either a building permit has been issued or a building permit application has been submitted for processing and said application has not expired; or (b) business operations have commenced in accordance with all applicable conditions of approval.*

The City's permit tracking system can be programmed to expire the discretionary permit and building permit application after six months (or one year when there are extenuating circumstances).

Lapse of approval of a discretionary permit during the building permit application review stage would be infrequent. This is because most individuals do not make an application for a building permit without making sure they have sufficient funding to carry out the project and because they invest a considerable sum in preparation of working drawings. However, one example of the misuse of the current system involves individuals cited by the City's Community Preservation staff for illegal construction. When these individuals have obtained authorization to retain a structure under a use permit, site plan review or variance, the conditions of approval require a building permit to ensure that the construction of the building is safe. However, the

enforcement action is frustrated when the violator does not pick up his/her building permit, as allowed under the current wording for "lapse of approval."

### Definition of Bedroom

The City's Off-Street Parking Regulations were revised in 1996 to require that the current parking requirements be imposed "(A)t the time that cumulative additions to a single-family or multi-family dwelling increase the original building floor area by more than 50 percent per unit or increase the number of sleeping rooms." As a result, a homeowner wishing to expand a single-family home by more than 50 percent or add bedrooms must either have a two-car garage or must provide one at the time of expansion. This requirement has resulted in many homeowners expanding their one-car garages to accommodate two vehicles. It has also limited the ability of some homeowners to expand significantly or add bedrooms.

City staff has observed that some individuals have attempted to circumvent the parking requirement by labeling building additions as "den," "prayer room," "office," "study room," "storage," etc. Even though these rooms could legitimately be used as described, they could also be used as bedrooms by the owner or future residents. For this reason, staff is recommending adoption of the following definition of "bedroom" or "sleeping room."

**SEC. 10-1.3500 DEFINITIONS BEDROOM or SLEEPING ROOM.** *An enclosed habitable space in a structure which is (a) designed **such that it could be used for sleeping purposes as determined by the Planning Director**, (b) which meets the room dimension requirements of the most recent edition of the Uniform Building Code, (c) **which is not accessed directly from the garage**, and (d) which has one or more windows.*

### Garage Definition

A garage conversion amnesty program was undertaken in 1993. The program was precipitated by the death of an elderly woman caused by a fire in an illegally converted garage. Another compelling reason was that neighborhoods were being adversely impacted by an increased number of resident vehicles parking throughout the streets because garages had been illegally converted to other purposes. The Zoning Ordinance was amended in 1995 to prohibit any future garage conversions once the amnesty program expired. The City's Community Preservation program still responds to complaints about garages being used as living quarters that were not made legal pursuant to the amnesty program.

The current Zoning Ordinance definition of a garage is not adequate for the Community Preservation inspectors to enforce the Ordinance as intended, which results in a potential health and safety issue when residents (including children) inhabit garages with inadequate ventilation and gas water heaters. The current definition reads,

**SEC. 10-1.3500 DEFINITIONS GARAGE.** *A fully enclosed and covered attached or detached structure accessory to a residential*

*use intended for storage of one or more motor vehicles used by the occupants of the premises.*

Staff suggests adoption of the following definition of a garage:

**GARAGE.** *A fully enclosed and covered attached or detached structure accessory to a residential use intended for storage of one or more motor vehicles used by the occupants of the premises; **which does not have any permanent obstructions that would prevent vehicles parking within; which has garage doors that are operable; and which does not have rugs, linoleum or other non-fire-resistant coverings on the floor.** The minimum dimensions of a single-car garage wherein no permanent obstructions may occur is 11' wide x 19' deep, and the minimum dimensions of a double-car garage wherein no permanent obstructions may occur is 18' wide x 19' deep. For purposes of this ordinance a garage of any dimension shall not be used as a habitable space.*

#### Use of Vehicles for Living Purposes

The Zoning Ordinance prohibits the use of any kind of vehicle for sleeping purposes except within an approved mobile home park. Staff recommends that the Zoning Ordinance be amended to clarify that vehicles may not be used for either sleeping or “living” purposes. The Community Preservation staff receives numerous complaints about the use of campers for living purposes; however, the current ordinance only references “sleeping” in vehicles as a use that is not permitted. The current wording also requires a difficult and objectionable inspection process to establish that sleeping actually occurs in a vehicle. Therefore, staff recommends amending the Zoning Ordinance as follows.

**SEC. 10-1.2735 SPECIAL STANDARDS AND CONDITIONS FOR CERTAIN USES. k. Vehicle Parking, Repair, Display and Storage Requirements.** *The term “vehicle” as used in this section shall include an automobile or truck (excluding truck tractor or any vehicle exceeding a maximum gross weight limit of 6,000 pounds of gross vehicle weight) recreational vehicle, trailer, boat mounted on trailer, special interest vehicle, or other vehicle referenced in California Vehicle Code section 5051, and other vehicles of similar kind and use. In all zoning districts, use of any kind of vehicle as defined herein for **living or** sleeping purposes shall be prohibited except within an approved mobile home park.*

#### Minor Clarifications and Corrections to the Zoning Ordinance

- Household Pets – In order to provide clear direction with regard to rabbits as household pets, the definitions of “Pets, Household” and “Livestock” are proposed to be amended as reflected in the underlined, bold language below:

SEC. 10-1.3500 DEFINITIONS PETS, HOUSEHOLD. *Small animals ordinarily and customarily domesticated and permitted in a dwelling and kept for company or pleasure and not for profit, such as dogs, cats, canaries, parakeets, fish, domestic mice, rats, guinea pigs, **up to four (4) rabbits**, or similar animals, as determined by the Planning Director. The keeping of more than four (4) cats or dogs requires an "Animal Fancier's Permit from the City Animal Control Officer.*

SEC. 10-1.3500 DEFINITIONS LIVESTOCK. *c. Small Livestock. Chickens, ducks, pigeons, **five (5) or more rabbits**, potbelly pigs, or similar small animals, as determined by the Planning Director.*

- New Automobile Dealerships – The Zoning Ordinance sets forth design and performance standards for new automobile dealerships. The standards do not address the use of microphones or other forms of communication devices that can be heard outside the confines of the auto dealership. Therefore, staff recommends adding the following performance standard:

SEC. 10-1.1045 MINIMUM DESIGN AND PERFORMANCE STANDARDS *h. Automobile Dealerships (New, located on Mission Boulevard between Harder Road and Highland/Sycamore (11) **Any public address/telephone/employee communication system shall be maintained so as to not be audible outside the confines of the dealership property as determined by the Planning Director.***

- Projections into Yards – The Zoning Ordinance provides for extensions of certain architectural features into required yard areas. However, there is no provision in the General Commercial District for projections of canopies, open porches, and landing areas in this district as there are in the other commercial zoning districts. Therefore, the following language is proposed:

SEC. 10-1.1045 MINIMUM DESIGN AND PERFORMANCE STANDARDS. *g. Architectural Projections into Yards. Architectural features such as bay windows, cornices, **canopies and awnings that are attached to the primary structure**, and eaves may extend 2 feet into any required yard; **landing places and open porches may extend 4 feet into a required rear yard.***

The provision regarding *canopies and awnings* would also be added to the standards for architectural projections in all other districts. This would

eliminate the misinterpretation that free-standing canopies are permitted within required yards.

- Home Occupations – The definition of Home Occupation does not allow for the sale or display of commodities except those produced on the premises. This provision would prohibit gun sales from homes. However, the definition of “Home Occupation-Expanded” provided for exceptions to this requirement subject to approval of an administrative use permit. In order to make clear that gun sales are not permitted from homes in Hayward, the following amendment is proposed:

SEC. 10-1.3500 DEFINITIONS Home Occupation – Expanded.  
*An expansion of the provisions of or variance to a home occupation as defined above regarding numbers of customers, hours of operation, sale of commodities produced on the premises **(excluding sale of guns)**, and minor repair only.*

- Group Homes – Error in Zoning Ordinance Text. Group homes are permitted in residential zoning districts in Hayward, and they are excluded from most commercial zones. The Commercial Office zoning district allows both residential and commercial development. And, although “large” group homes are permitted in the Commercial Office zoning district, subject to approval of an administrative use permit, there was apparently an oversight as is no reference to a “small” group home in this zoning district. Therefore, as provided for by State law, staff recommends adoption of the language.

SEC. 10-1.1115 USES PERMITTED. a. Primary Uses. (4) (a)  
*Multiple-Family dwellings; **(b) small group homes associated with single-family dwellings.***

- Recreational Facilities in General Commercial Zone – Error in Zoning Ordinance Text. Recreational facilities are permitted in the Neighborhood Commercial zoning district, subject to approval of an administrative use permit, but there is no longer mention of this use in the General Commercial zoning district. Therefore, staff recommends adding the following language to the Zoning Ordinance:

SEC. 10-1.1020 CONDITIONALLY PERMITTED USES. a.  
*Administrative Uses. (7) Other Uses. **(u)Recreational Facility***

- Religious Facilities in Commercial Office District – Error in Zoning Ordinance Text. In most other commercial zoning districts, religious facilities are permitted, subject to approval of an administrative use permit; however, it appears that this opportunity was inadvertently omitted from the Commercial Office zoning district. Therefore, staff recommends adding the following language to the Zoning Ordinance.

SEC. 10-1.1120 CONDITIONALLY PERMITTED USES. a.  
*Administrative Uses. (7) Other. **(i) Religious facilities***

- Multi-Family Dwellings in the Medium-Density Residential District – Error in Zoning Ordinance Text. Multi-family dwellings were inadvertently left out of the Medium-Density Residential zoning district as a primary use. Therefore, staff recommends adding the following language to the Zoning Ordinance:

SEC. 10-1.415 USES PERMITTED. a. Primary Uses. (1)  
Residential Uses. (a) Multi-family dwellings

- Tattoo and Massage Parlors in the General Commercial District – Error in Zoning Ordinance Text. “Tattoo” and “Massage Parlors” are listed as uses that are subject to both an Administrative Use Permit and a Conditional Use Permit, which requires approval by the Planning Commission. Staff recommends that reference to these uses as subject to an Administrative Use Permit be removed:
- Minimum Lot Size for Townhouses in the High-Density Residential District and Commercial Office District – Error in Zoning Ordinance Text. The minimum lot sizes in residential districts classically reflect lot sizes that are adequate for development of condominium or apartment buildings, which is at least 5,000 square feet per lot. However, townhouses are a form of multi-family development where the actual lot is coincident with the footprint of each individual townhouse and private yard area. The Medium-Density Residential zoning district correctly indicates that the minimum lot size requirement for a townhouse lot is “consistent with building footprint and printed project areas.” However, this lot standard was inadvertently omitted from the High-Density Residential District and the Commercial Office District, both of which also support townhouse development. Therefore, staff recommends adding the following language to the Zoning Ordinance:

SEC. 10-1.525 LOT REQUIREMENTS. b. Minimum Lot Area Per Dwelling Unit: (4) **Townhouse Lot(s): Consistent with building footprint and printed project areas**

SEC. 10-1.1125 LOT REQUIREMENTS. b. Minimum Lot Area Per Dwelling Unit: Same as permitted in RM or RH Districts, whichever is deemed consistent with the General Plan Map and Neighborhood Plan; **Townhouse Lot shall be consistent with building footprint and printed project areas**

## ENVIRONMENTAL REVIEW (CEQA)

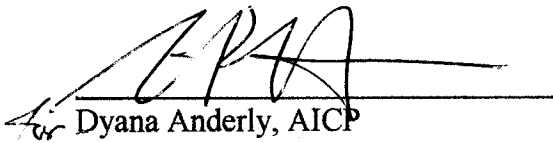
This proposed modifications to the Zoning Ordinance are defined as a “project” under the parameters set forth in the California Environmental Quality Act (CEQA) Guidelines. However, no significant environmental impacts are identified. Therefore, a Negative Declaration has been prepared.

## **PUBLIC NOTICE**

A referral notice of the intended Zoning Ordinance amendments was mailed to every homeowners' associations in Hayward, the Chamber of Commerce, the Rental Property Association. The Planning Division received the following response industrial or retail use.

On March 21, 2003, a notice of public hearing and preparation of a Negative Declaration was published in The Daily Review.

Prepared by:

  
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Attachments:

Findings for Approval of Amendments



## **FINDINGS OF APPROVAL**

### **TEXT AMENDMENT NO. PL-2003-0175**

#### **City of Hayward (Applicant)**

#### **Amendment to the Zoning Ordinance Relative to Expiration of Discretionary Permits and Miscellaneous Clarifications and Corrections, Including Definition of a Garage, Bedroom, Home Occupation, Household Pets and Livestock**

- A. The project application has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Checklist Form has been completed for the proposed project. The Initial Study has determined that the proposed project could not result in significant effects on the environment;
- B. Substantial proof exists that the proposed changes will promote the public health, safety, convenience, and general welfare of the residents of Hayward in that the amendments will allow for greater clarification of the development permit process and of the regulations regarding development;
- C. The proposed change is in conformance with the purposes of this Ordinance and with the General Plan, and all other applicable, officially adopted policies and plans in that the changes are minor and do not conflict with any other ordinances or policies;
- D. Streets and public facilities existing or proposed will not be impacted and will continue to be able to serve all structures that would be impacted by adoption of this ordinance; and
- E. The amendments will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations in that the amendments will allow for greater clarification of the development permit process and of the regulations regarding development.
- F. The proposed amendments to the Zoning Ordinance more clearly establishes that a discretionary permit must be initiated within specific timelines or approval of the permit will lapse. This contributes to establishing uses and structures that are in keeping with current land use plans, policies and City regulations.
- G. A proposed amendment to the Zoning Ordinance more clearly defines a garage so as to clarify when certain residential building permit applications trigger the requirement for a two-car garage in connection with that permit. This amendment is in keeping with the City policy to provide adequate off-street parking for its residential neighborhoods.
- H. A proposed amendment to the Zoning Ordinance more clearly establishes that the communications systems of new automobile dealers must not be audible outside the confines of the property on which the automobile dealership is located. This amendment

is in keeping with the City policy to ensure compatibility between automobile dealers and nearby residential neighborhoods.

- I. A proposed amendment to the Zoning Ordinance more clearly establishes that sales of guns are prohibited from residences. This amendment is in keeping with the City policy to ensure compatibility between commercial activity and residential neighborhoods.